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MEMORANDUM

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TO: Docket Control

FROM: Ernest G. Johnson *EA for EGJ*
Director
Utilities Division

THRU: Wilfred Shand, Jr.
Manager, Telecommunications and Energy Section
Utilities Division

DATE: May 1, 2007

RE: IN THE MATTER OF THE APPLICATION OF BROADBAND
DYNAMICS, L.L.C. FOR APPROVAL OF A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LOCAL
EXCHANGE TELECOMMUNICATION SERVICES (DOCKET NO. T-
04102A-06-0176)

Attached is the Staff Report for the above referenced application. The Applicant is applying for approval to provide the following services:

- Resold Local Exchange Services

Staff is recommending approval of the application.

EGJ:JFB:red

Originator: John Bostwick

Arizona Corporation Commission
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SERVICE LIST FOR: Broadband Dynamics, L.L.C.
DOCKET NO. T-04102A-06-0176

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

BROADBAND DYNAMICS, L.L.C.

DOCKET NO. T-04102A-06-0176

IN THE MATTER OF THE APPLICATION OF BROADBAND DYNAMICS, L.L.C. FOR
APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO
PROVIDE RESOLD LOCAL EXCHANGE TELECOMMUNICATION SERVICES

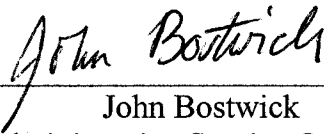
April 30, 2007

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STAFF ACKNOWLEDGMENT

The Staff Report for the Application of Broadband Dynamics, L.L.C. for Approval of a Certificate of Convenience and Necessity to provide Resold Local Exchange Telecommunication Services (Docket No. T-04102A-06-0176) was the responsibility of the Staff member listed below. John Bostwick was responsible for the review and analysis of the application for a Certificate of Convenience and Necessity to provide resold local exchange and petition for a determination that its proposed services should be classified as competitive.

A handwritten signature in cursive script that reads "John Bostwick". The signature is written in dark ink and is positioned above a horizontal line.

John Bostwick
Administrative Service Officer II

1. INTRODUCTION

On March 17, 2005, Broadband Dynamics, L.L.C. ("BD" or "Applicant") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide resold local exchange service in Arizona. The Applicant petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive.

On March 16, 2006, the Applicant notified the Commission that it changed its name from Arizona Telephony Brokers, L.L.C. to Broadband Dynamics, L.L.C. In Decision No. 65533, Arizona Telephony Brokers, L. L.C. was granted a CC&N to provide resold long distance telecommunications services in Arizona on January 23, 2003.

The Applicant has published legal notice of the Application in all counties where it proposes to provide service. On September 22, 2006, BD filed an Affidavit of Publication from the Arizona Republic that complies with the Commission's notice requirements.

Staff's review of this Application addresses the overall fitness of the Applicant to expand its existing CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive and if the Applicant's initial rates are just and reasonable.

2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

BD indicated that it currently provides resold local exchange services in 32 states, excluding Arizona. Staff contacted sixteen (16) state PUCs to determine if the Applicant is certificated or registered to provide resold local exchange telecommunications services in the states listed by the Applicant. Staff also inquired if there were any consumer complaints against the Applicant. The state PUCs did not report any complaints against BD. Based on this information, Staff has determined that the Applicant has sufficient technical capabilities to provide resold local exchange telecommunications services in Arizona.

3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

The Applicant provided unaudited financial statements for the twelve months ending December 31, 2005. These financial statements list assets in excess of \$4.4 million; equity in excess of \$3.5 million and a net income in excess of \$2.0 million. The Applicant did not provide notes related to the financial statements.

The Applicant stated in its proposed Tariff (reference Sections 2.5.4 and 2.5.5 on pages 32 and 33) that it does not collect advances and/or deposits from its customers. Staff reviewed the proposed Tariff and verified that prepayments are not collected by BD. Staff believes that the Applicant's customers should be protected by the procurement of a

performance bond or an irrevocable sight draft Letter of Credit. Since the Applicant is requesting a CC&N for only resold local exchange services and advances, deposits, and prepayments will not be collected, a limited performance bond or an irrevocable sight draft Letter of Credit is appropriate. Should the Applicant seek in the future to collect advances, deposits or prepayments, the bond coverage or an irrevocable sight draft Letter of Credit needs to increase in increments equal to 50 percent of the total minimum bond or letter of credit amount when the total amount of the advances, deposits, and prepayments is within 10 percent of the total minimum bond or letter of credit amount.

To that end, Staff recommends that the Applicant procure a performance bond or an irrevocable sight draft Letter of Credit, at the discretion of the Applicant, in the amount of \$25,000. The minimum bond amount or irrevocable sight draft Letter of Credit amount of \$25,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The bond amount or irrevocable sight draft Letter of Credit amount should be increased in increments of \$12,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$2,500 of the bond amount or irrevocable sight draft Letter of Credit amount. If the Applicant desires to discontinue service, it must file an application with the Commission pursuant to AAC R14-2-1107. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond or irrevocable sight draft Letter of Credit.

The original performance bond or irrevocable sight draft Letter of Credit must be filed with the Commission's Business Office and copies of the performance bond or irrevocable sight draft Letter of Credit with Docket Control, as a compliance item in this docket, within 30 days of the effective date of this Decision. The original performance bond or irrevocable sight draft Letter of Credit must remain in effect until further order of the Commission. The Commission may draw on the performance bond or irrevocable sight draft Letter of Credit, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is default of its obligations arising from its Certificate. The Commission may use the performance or irrevocable sight draft Letter of Credit funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers.

4. ESTABLISHING RATES AND CHARGES

The Applicant would be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") is providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other

competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Initially, BD will have a zero-value rate base and its projected fair value rate base will be zero at the end of the first twelve months of operation. The rate to be charged by the Applicant will be heavily influenced by the market.

Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other CLECs and ILECs offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. Therefore, while Staff considered the fair value rate base information submitted by the Applicant, it did not accord that information substantial weight in its analysis.

Both an actual rate and a maximum rate may be listed for each competitive service offered. The rate charged for a service may not be less than the Applicant's total service long-run incremental cost of providing the service pursuant to AAC R14-2-1109.

5. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES

Issues related to the provision of local exchange services are discussed below.

5.1 *NUMBER PORTABILITY*

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

5.2 *PROVISION OF BASIC TELEPHONE SERVICE AND UNIVERSAL SERVICE*

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications services providers that interconnect into the public switched network shall provide funding for the Arizona Universal Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

5.3 QUALITY OF SERVICE

Staff believes that the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for Qwest (f/k/a USWC) in Docket No. T-01051B-93-0183 (Decision No. 59421). The penalties developed in that docket were initiated because Qwest's level of service was not satisfactory and the Applicant does not have a similar history of service quality problems. Staff does not recommend that those penalties apply to the Applicant. In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that it is unnecessary to subject the Applicant to those penalties at this time.

5.4 ACCESS TO ALTERNATIVE LOCAL EXCHANGE SERVICE PROVIDERS

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

5.5 911 SERVICE

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications service market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and the Federal Communications Commission 47 CFR Sections 64.3001 and 64.002, it will provide all customers with 911 and E911 service, where available, or will coordinate with the ILECs and emergency service providers to provide 911 and E911 service.

5.6 CUSTOM LOCAL AREA SIGNALING SERVICES

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return

calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

6. REVIEW OF COMPLAINT AND COMPLIANCE INFORMATION

The Applicant certified that it has neither had an application for service denied, nor revoked in any state. The Applicant also certified that there has been no formal or informal complaint proceeding in the other jurisdictions in which the Applicant provides service. Finally, the Applicant certified that there have not been any civil or criminal proceedings against the Applicant.

Consumer Services Section of the Utilities Division reports that no consumer complaints, inquiries, and opinions were filed against the Applicant from January 1, 2003 to June 5, 2006. Also, Consumer Services reports that the Applicant is in good standing with the Corporation Division of the Commission.

Compliance and Enforcement Section of the Utilities Division indicates that the Applicant is current in filing its annual reports. In addition, Compliance and Enforcement states that the Applicant does not have any delinquent compliance items.

The Applicant certified that none of its officers, directors or partners has been involved in any civil or criminal investigations, formal or informal complaints. The Applicant also indicated that none of its officers, directors or partners has been convicted of any criminal acts in the past ten (10) years.

7. COMPETITIVE SERVICES ANALYSIS

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive. The Applicant indicated that it does not have a resale agreement in operation at this time. Staff's analysis and recommendations are discussed below.

7.1 *COMPETITIVE SERVICES ANALYSIS FOR LOCAL EXCHANGE SERVICES*

7.1.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that, is competitive.

The local exchange market that the Applicant seeks to enter is one in which a number of new CLECs have been authorized to provide local exchange service. Nevertheless, ILECs hold a virtual monopoly in the local exchange service market. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, the

Applicant will have to compete with those companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments.

7.1.2 The number of alternative providers of the service.

Qwest and various independent LECs are the primary providers of local exchange service in the State. Several CLECs and local exchange resellers are also providing local exchange service.

7.1.3 The estimated market share held by each alternative provider of the service.

Since Qwest and the independent LECs are the primary providers of local exchange service in the State, they have a large share of the market. Most CLECs and local exchange resellers have a limited market share. Cox Telcom is the only CLEC believed to have captured a significant market share in the Phoenix and Tucson Metro areas.

7.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in AAC R14-2-801.

None.

7.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

ILECs have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the CLECs and local exchange resellers also offer substantially similar services.

7.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories and the CLEC's have also entered the market.
- b. One in which new entrants will be dependent upon ILECs:

1. To terminate traffic to customers.
 2. To provide essential local exchange service elements until the entrant's own network has been built.
 3. To interconnect.
- c. One in which ILECs have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market since new entrants do not have a long history with any customers.
- d. One in which Qwest provides a quality of service that has generated a significant number of complaints. The complaints led the Commission to adopt service rules that contain penalties if the service quality standards are not met. A provider of alternative service, such as the Applicant, should provide Qwest – as well as other providers – with the incentive to produce high quality service including service installation and repair on a timely basis.
- e. One in which most customers have a few, if any choices since there is generally only one or two providers of local exchange service in each service territory.
- f. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

8. RECOMMENDATIONS

Staff recommends BD's application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant complies with all Commission Rules, Orders, and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;

5. That the Applicant cooperate with Commission investigations including, but not limited to, customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Applicant indicating that its fair value rate base is zero. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local carriers, local incumbent carriers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. Accordingly, the Applicant's fair value rate base is too small to be useful in a fair value analysis. In addition, the rate to be ultimately charged by the company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Applicant, the fair value rate base information provided should not be given substantial weight in this analysis;
7. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge.
8. That the Applicant offer Last Call Return services that will not return calls to the telephone numbers that have the privacy indicator activated.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. The Applicant shall docket a conforming tariff for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariff shall coincide with the application and state that the Applicant does not collect advances, deposits, and/or prepayments from its customers., and in accordance with the Decision;
2. The Applicant shall:
 - a. Procure a performance bond or an irrevocable sight draft Letter of Credit, at the discretion of the Applicant, in the amount of \$25,000. The minimum bond amount or irrevocable sight draft Letter of Credit amount of \$25,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The bond amount or irrevocable sight draft Letter of Credit amount should be increased in increments of \$12,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$2,500 of the bond amount or irrevocable sight draft Letter of Credit amount. If the Applicant

desires to discontinue service, it must file an application with the Commission pursuant to AAC R14-2-1107. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond or irrevocable sight draft Letter of Credit.

- b. File the original performance bond or irrevocable sight draft Letter of Credit with the Commission's Business Office and copies of the performance bond or irrevocable sight draft Letter of Credit with Docket Control, as a compliance item in this docket, within 30 days of the effective date of this Decision. The performance bond or irrevocable sight draft Letter of Credit must remain in effect until further order of the Commission. The Commission may draw on the performance bond or irrevocable sight draft Letter of Credit, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is default of its obligations arising from its Certificate. The Commission may use the performance or irrevocable sight draft Letter of Credit funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers.

8.1 RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS PROPOSED SERVICES CLASSIFIED AS COMPETITIVE

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange service markets. Therefore, the Applicant currently has no market power in the local exchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.